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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/410,999	10/01/1999	CHRISTOPHER COSGROVE CREAGAN	13098	7748

7590

06/26/2002

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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 06/26/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

A 9-14

**Office Action Summary**

Application No.

09/410,999

Applicant(s)

CREAGAN ET AL.

Examiner

Alicia Chevalier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**RESPONSE TO AMENDMENT**

***WITHDRAWN REJECTIONS***

1. The 35 U.S.C. §103 rejection of claim 16 over Thompson (5,368,926) in view of Datta (5,695,376) and further in view of Powers (5,597,647) of record in paper #7, pages 5-6, paragraph #8 has been withdrawn.
2. The 35 U.S.C. §103 rejections of record in paper #9, pages 3-7, paragraph #8 have been withdrawn.

***NEW REJECTIONS***

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

***Claim Rejections - 35 USC § 103***

4. Claims 1, 2, and 4-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606).

Bishop discloses an absorbent personal care article such as diapers, training pants, incontinence garments, sanitary napkins, bandages and the like with fibrous nonwoven surge layer (col. 3, lines 7-11). Personal care absorbent articles generally have a fluid permeable body side liner and a liquid impermeable backing layer with an absorbent core disposed there between. Bishop's absorbent personal care article further comprises a surge layer (first layer) disposed between the body side liner (second layer) and the absorbent core (third layer). The surge layer

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is attached to the body liner and the absorbent core to promote liquid transfer. See column 2, lines 34-41.

To further enhance fluid transfer, it is desirable that the fibrous nonwoven web surge layer be attached to the layers directly above and below its exterior surfaces. To this end, suitable attachment means include, but are not limited to, adhesives, thermo bonding, ultrasonic bonding, needling and pin aperturing as well as combinations of the foregoing or other appropriate attachment means. See column 3, lines 35-44.

The surge layer is made of a spunbond nonwoven polyethylene/polypropylene bicomponent (conjugate) fibrous web which is crimped. The surge layer having a basis weight of at least 20 grams per square meter. See column 2, lines 42-48 and column 3, line 45 through column 4, line 40.

Bishop fails to disclose a creased surge layer and the materials for the body side liner.

Thompson discloses a fluid accepting, transporting, and retaining structure used for disposable absorbent articles such as diapers, adult incontinence products, catamenials, bandages, and sanitary napkins (col. 1, lines 12-15). The structure comprises a topsheet, a pleated fluid accepting and transporting layer (surge), an absorbent core, and a backsheet (col. 4, lines 38-34 and figure 4). The transporting layer can be a nonwoven spunbond polyethylene or polypropylene fiber material (col. 9, line 6 to col. 10 line 68).

Proxmire discloses an absorbent personal care article having a body side liner which exhibits improved softness and dryness and provides for rapid uptake of liquid (col. 1, lines 8-13). The body side liner comprises a spunbond nonwoven polyethylene/polypropylene conjugate fiber having a density within the range of about 0.01 to 0.03 g/cc (col. 17 line 21 through col. 18,

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line 59). The basis weight of the body side liner is at least about 15 grams per square meter and not more than about 40 gsm (col. 16, lines 49-57). The fibers can further include a treatment/finish of about 0.2-0.8% of ethoxylated ester (wetable) surfactant material (col. 1, lines 57-59).

Proxmire further discloses an intermediate transfer layer under the body side liner comprising an apertured film to permit liquid to readily pass through its thickness to help isolate the wearer's skin from liquids held in absorbent structure (col. 7, lines 28-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the body side liner of Proxmire as the body side liner of Bishop because of the improved softness, dryness, and rapid uptake of liquid exhibited by Proxmire.

It also would have been obvious to one of ordinary skill in the art at the time the invention was made to add apertures to the surge layer of Bishop as taught by Proxmire because the apertures would increased ability of Bishop's surge layer to pass liquid through to the absorbent layer.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to pleat (crease) the surge layer of Bishop as taught by Thompson. One of ordinary skill would be motivated to creased the surge layer in order to increase the surface area of the liquid handling layer, thus increasing the amount of liquid capable of being handle by the layer.

Since density is added when a layer is pleated or creased, it is inherent that the body side liner is less dense then the pleated surge layer when the body side liner is pleated.

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5. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. (5,486,166) in view of Thompson et al. (5,368,926) and Proxmire et al. (5,192,606) as applied to claims 1, 2, and 4-15 above, and further in view of Powers (5,597,647).

Bishop, Thompson, and Proxmire disclose all the limitations of the instant claimed invention except for the material of the absorbent layer.

Powers discloses a personal care product such as diapers, adult incontinence product, and feminine hygiene products (col. 4, lines 57-59) comprising an absorbent layer comprising spunbond polyethylene-polypropylene side-by-side conjugate fibers with a weight basis of 0.34 to 102 gsm and density of between 0.026 and about 0.013 ounces/cubic inch (0.022 to 0.045 g/cc) (col. 7, line 44 to col.8, line 60). The absorbent layer also contains an internal wetting agent to increase the wettability of the layer in an amount of from 0.7 to about 3 weight percent of the layer (col. 7, lines 51-55).

It would have been obvious to one of ordinary skill in art at the time of the invention to use the absorbent layer as taught by Powers as the absorbent layer of the combination of Bishop and Proxmire because of the increased wettability of Powers absorbent layer.

Process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT

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discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation through-air bonding is a method of production and therefore does not determine the patentability of the product itself.

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

6. Applicant's arguments filed in paper #10 regarding the 35 U.S.C. 103 rejections of record have been carefully considered but are moot due to the new grounds of rejection.

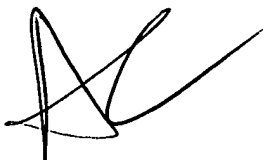
#### ***Conclusion***

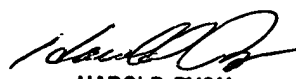

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac  
6/23/02



  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  


6/24/02